S.B. Civil Second Appeal No.15/2007
Chuna Ram
vs
Hanuman Singh & Ors.

Date of order : 13.12.2007.

HON'BLE MR. PRAKASH TATIA, J.

Mr.NL Joshi,for the appellant.

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Heard learned counsel for the appellant.

The plaintiff's suit for declaration and injunction was allowed by the trial court on 26th Oct., 2004 holding the particular way as claimed by the plaintiff to be the way available for plaintiff and restrained the defendants from closing that way. The appeal against the said judgment and decree of the trial court was dismissed by the appellate court on 14th Sept., 2006, hence, this second appeal.

Learned counsel for the appellant submitted that the courts below committed error of law by discarding the Commissioner's report and map prepared by the Commissioner in the proceedings under Order 39 Rule 1 and 2 CPC despite the fact that said Commissioner report was produced in the civil original suit and tendered in evidence. It is also submitted that the plaintiff produced the revenue map but did not produce any of witness from the revenue department to prove the map and, therefore, both the courts below

have committed serious error in declaring the way. It is also submitted that the plaintiff admittedly purposed the suit property six months before only from the date of filing of the suit and, therefore, this aspect should have been considered by the two courts below.

I considered the submissions of learned counsel for the appellant and perused the reasons given by the courts below in the impugned judgments.

The two courts below considered the Commissioner's report and did not rely upon the Commissioner's report in view of the other evidence. The courts below accepted the revenue map produced by the plaintiff and there was no necessity of producing of revenue authorities to prove the map as the map was prepared by the revenue authorities as Government servant in discharge of their official duties and, therefore, that evidence if has been relied upon by the courts below, then the courts below have not committed any error.

Hence, no substantial questions of law are involved in this appeal and the appeal of the appellant is dismissed.

(PRAKASH TATIA), J.

c.p.goyal/-